

**Supplemental Letter of Findings Number: 04-20140578**  
**Sales and Use Tax**  
**For Tax Years 2011-13**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

**HOLDING**

Retail Merchant/Service Provider showed sufficient cause to warrant waiver of penalties.

**ISSUE**

**I. Tax Administration–Negligence Penalty.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of negligence penalties.

**STATEMENT OF FACTS**

Taxpayer is an Indiana retail merchant in the automobile service industry. As the result of a sales and use tax audit covering the tax years 2011, 2012, and 2013, the Indiana Department of Revenue ("Department") determined that Taxpayer had under-collected sales tax as a retail merchant and therefore issued proposed assessments for sales tax, penalty, and interest for those years. Taxpayer disagreed with the assessment of sales tax as well as the penalty assessments. Taxpayer submitted a protest to that effect. An administrative hearing was conducted and a Letter of Findings ("LOF") was issued denying Taxpayer's protest of the imposition of base tax. Taxpayer filed a request for rehearing, stating that the initial LOF did not address the protest of penalties. A rehearing was held addressing the imposition of penalties and this Supplemental Letter of Findings results. Further facts will be supplied as required.

**I. Tax Administration–Negligence Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of negligence penalties for the tax years 2011, 2012, and 2013. Taxpayer asks for a waiver of the penalties assessed against it on the grounds that it paid sales tax at the time it purchased tangible personal property ("TPP") which it then consumed in the course of providing automobile repair services and so Indiana sales or use tax was always paid on the purchase of the TPP at issue. Specifically, Taxpayer states that it paid sales tax when it purchased the TPP and then did not charge sales tax to its customers even though it charged the cost of that TPP to its customers. The standard procedure for a situation such as this is for the service provider to pay sales or use tax on the consumable supplies it uses in the course of providing its service and to not charge sales tax to its customers, since the TPP is not transferred to the customers. The Department's audit determined that, since Taxpayer did charge its customers for those consumable supplies, sales tax should have been collected. The initial LOF denied Taxpayer's protest on the basis that sales tax is due when TPP is transferred from a retail merchant to a customer. Taxpayer protests the imposition of penalty on the basis that it was attempting in good faith to comply with both its tax duties and its need to be fully reimbursed by its customers.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dept. of State Revenue v. Rent-A-Center East,

Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

The Department refers to IC § 6-8.1-10-2.1(d), which states:

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.  
(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.  
(Emphasis added).

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.  
(Emphasis added).

Taxpayer protests the Department's assessment of penalties. After review of the documentation and analysis provided in the protest process, the Department may waive penalty as provided by [45 IAC 15-11-2\(c\)](#). IC § 6-8.1-10-2.1 requires a taxpayer to show that failure to remit taxes in a timely manner is due to reasonable cause. In the instant case, Taxpayer was acting reasonably in its attempts to comply with its sales and use tax duties. Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

### FINDING

Taxpayer's protest is sustained.

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